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U.S. PATENT APPLICATION NO. 10/519,764  
(PCT LEGAL OFFICE)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Patent Application of:

Charles Mioskowski et al.

Application No.: 10/519,764

Art Unit:

National Stage Filed: December 28, 2004

Examiner: Washington

I.A. Filing Date: June 28, 2003

For: LACTONE COMPOUNDS WHICH CAN BE USED AS ANTIOXIDANT  
AGENTS IN PHARMACEUTICAL, COSMETIC OR FOOD  
COMPOSITIONS AND THEIR METHOD OF PREPARATION

**PETITION UNDER 37 CFR § 1.181(a) TO INVOKE THE SUPERVISORY  
AUTHORITY OF THE DIRECTOR**

Mail Stop Petition  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

Commissariat A L'Energie Atomique and Centre National De La Recherche  
Scientifique (CEA), the owner of U.S. Patent Application No. 10/519,764,  
respectfully requests the Director to exercise his discretion and withdraw the holding  
of abandonment pursuant to 37 C.F.R. § 1.181.

No fee is due with this petition. However, authorization is hereby granted to  
charge any required fee to Deposit Account No. 50-0911.

## **STATEMENT OF FACTS**

The instant application is a National Stage of PCT/FR03/01979, with an International Filing date of June 28, 2003, and a priority claim to French Patent Application No. 02/08081, filed on June 28, 2002. The request to enter the National Stage was filed on December 28, 2004.

In entering the National Stage, the request filed on December 28, 2004 included a non-executed Declaration. Accordingly, on September 20, 2005, the USPTO mailed a notification of MISSING REQUIREMENTS (Form PCT/DO/EO/905). The notification indicated that an executed Oath or Declaration had to be submitted within two (2) of the mailing date of the notice, or within 32 months from the priority date of the application, whichever is later. The Notification also stated that the time period set forth to file a response could be extended under the provisions of 37 C.F.R. 1.136(a).

Applicants filed an executed Declaration on January 18, 2006. A copy of the stamped post card evidencing this filing is attached as Exhibit A. With the Declaration, Applicants also filed a Response to Notice to File Missing Parts, attached as Exhibit B, authorizing the USPTO to charge any fees necessary for any applicable extension of time and requesting any such extensions if necessary. On July 17, 2006, however, the USPTO mailed a Notification of Abandonment. The Notification states that the application has been abandoned because Applicants has failed to respond to the Notification of Missing Requirements.

In light of the following arguments, Applicants respectfully request withdrawal of the abandonment.

## DISCUSSION

According to 37 C.F.R. 1.136(a)(3), Applicants appropriately requested a two months extension of time thus making the filing of the executed Declaration timely.

According to the Notification of Missing Requirements, the time period to respond was the later of two months from the mailing of the notice or 32 months from the priority date for the application. Additionally, the Notification also stated that “the time period set above may be extended by filing a petition and fee for extension of time under the provisions of 37 C.F.R. 1.136(a).”

According to 37 C.F.R. 1.136(a), “Applicants may extend the time period for reply up to the earlier of the expiration of any maximum period set by statute or five months after the time period set for reply.” According to 37 C.F.R. 1.136(a)(3), “a written request may be submitted in an application that is an authorization to treat any concurrent or future reply, requiring a petition for an extension of time under this paragraph for its timely submission, as incorporating a petition for extension of time for the appropriate length of time.” Furthermore, “an authorization to charge all required fees, fees under §1.17, or all required extension of time fees will be treated as a constructive petition for an extension of time in any concurrent or future reply requiring a petition for an extension of time under this paragraph for its timely submission.”

The Notification of Missing Requirements was mailed on September 20, 2005. Accordingly, two months from the mailing of the notice expired on November 20, 2005.

On January 18, 2006, within two months from the end of the time period set for reply, Applicants submitted an executed Declaration. A post card evidencing this filing is attached as Exhibit A. As indicated on the post card, along with the executed

Declaration, Applicants also submitted, *inter alia*, a Response to Notice to File Missing Parts (2 pages). *See Exhibit B*. On page 2 of this response Applicants stated:

If these papers are not considered timely filed by the Patent and Trademark Office, then a petition is hereby made under 37 C.F.R. §1.136, and any additional fees required under 37 C.F.R. §1.136 for any necessary extension of time, or any other fees required to complete the filing of this response, may be charged to Deposit Account No. 50-0911. Please credit any overpayment to deposit Account No. 50-0911. A duplicate copy of this sheet is enclosed.

This statement is sufficient to meet the petition for a two month extension needed for the reply to the Notification of Missing Requirements. This statement is a written request submitted in an application that is an authorization to treat the concurrent reply, requiring a petition for an extension of time under 37 C.F.R. 1.136 for its timely submission, as incorporating a petition for extension of time for the appropriate length of time, in this case two months. Accordingly, this statement in lieu of a separate petition appropriately extended the time period for response thereby making the January 18, 2006 submission timely.

Alternatively, this statement should have been treated as a constructive petition for extension of two months. The statement includes the authorization to charge all required fees, and all required extension of time fees. Under 37 C.F.R. 1.136(a)(3), authorization to charge all required extension of time fees will be treated as a constructive petition. Accordingly, the statement should have been treated as a constructive petition for an extension of time for two months thereby making the submission of the reply and of the petition timely.

### CONCLUSION

Applicants have met the requirements under the Rules and have therefore filed a timely response to Notification of Missing Requirements. As such, the instant

Petition under 37 CFR § 1.181(a)  
Application No. 10/519,764

application was improperly abandoned. For the foregoing reasons, the undersigned respectfully requests that the abandonment be withdrawn.

No fee is due with this petition. If Patent Office deems that any additional fees are necessary, please charge required fees to Deposit Account No. 50-0911.

Dated: August 18, 2006

Respectfully submitted,

By

  
Mark R. Kresloff  
Registration No.: 42,766

MCKENNA LONG & ALDRIDGE LLP  
1900 K Street, N.W.  
Washington, DC 20006  
Attorney for Patent Holder

Atty Docket No.: 10404.006.00

Inventor: Charles MIOSKOWSKI, et al.

Application  
No.: 10/519,764

Filing  
Date: December 28, 2004

Title: COMPOSITION, FOAM AND PROCESS FOR THE  
DECONTAMINATAION OF SURFACES

**Documents Filed:**

Response to Notice to File Missing Parts (2 pages)  
Copy of Notification of Missing Requirement (2 pages)  
Declaration and Power of Attorney (3 pages)  
Assignment papers (2 pages)  
Request to Change Attorney Docket Number (1  
page)  
Change Correspondence Address (1 page)

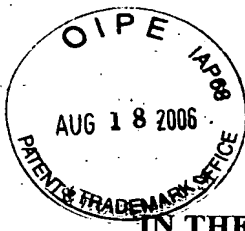


Via:

Sender's Initials: SL/syc

Date: 1/18/2006

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Docket No.: 10404.006.00  
(PATENT)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Patent Application of:  
Charles MIOSKOWSKI, et al.

Customer No.: 30827

Application No.: 10/519,764

Confirmation No.: 7274

Filed: December 28, 2004

Art Unit: TBA

For: COMPOSITION, FOAM AND PROCESS FOR  
THE DECONTAMINATION OF SURFACES

Examiner: TBA

MS Missing Parts  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**RESPONSE TO NOTICE TO FILE MISSING PARTS OF APPLICATION**

Dear Sirs:

In response to the Notice to File Missing Parts of Application – Filing Date Granted mailed September 20, 2005, Applicants respectfully submit a Combined Declaration and Power of Attorney and an Assignment (and Recordation Form Coversheet).

In light of the foregoing, this application is deemed to be in proper condition for examination and such favorable action is earnestly solicited.

DC:50388825.1

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Application No.: 10/519,764

Docket No.: 10404.006.00

If these papers are not considered timely filed by the Patent and Trademark Office, then a petition is hereby made under 37 C.F.R. §1.136, and any additional fees required under 37 C.F.R. §1.136 for any necessary extension of time, or any other fees required to complete the filing of this response, may be charged to Deposit Account No. 50-0911. Please credit any overpayment to deposit Account No. 50-0911. A duplicate copy of this sheet is enclosed.

Dated: January 18, 2006

Respectfully submitted,

By

  
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Registration No.: 42,766

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